

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DIANE MURPHY,

Plaintiff,

v.

NO. 1:05cv443-W
Demand for Jury Trial

ADVANCE AMERICA CASH
ADVANCE CENTERS OF ALABAMA,

Defendant.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant, Advance America Case Advance Centers of Alabama, pursuant to Fed. R. Civ. P. 56, moves for summary judgment on the grounds that there are no genuine issues of material fact, and Defendant is entitled to judgment in its favor as a matter of law with respect to all claims raised in Plaintiff's Complaint.

As set forth in more detail in the accompanying memorandum of law, Defendant is entitled to summary judgment for the following reasons:

Plaintiff's disparate treatment claims should be dismissed because: (1) Plaintiff cannot establish a *prima facie* claim of race discrimination in violation of § 1981; (2) Defendant has stated legitimate, nondiscriminatory reasons for its actions; and (3) Plaintiff cannot show that Defendant's legitimate, nondiscriminatory reasons are a pretext for race discrimination.

Plaintiff's hostile work environment claim should be dismissed because the facts demonstrate that the activities required of Plaintiff for which she claims harassment were race neutral being required of all employees. Further, these actions were not sufficiently severe or pervasive so as to

alter the terms and conditions of her employment. Moreover, Plaintiff admits that she was aware of but never used Defendant's anti-harassment policy and reporting procedures. She never complained about any alleged racial harassment or racial discrimination during her employment. Thus, she failed to take advantage of procedures reasonably calculated by the employer to avoid such harm.

A Memorandum in Support of Defendant's Motion for Summary Judgment, including a Statement of Undisputed Material Facts citing pertinent pages and exhibits from the deposition transcript of Plaintiff, and pertinent testimony and exhibits from the Declaration of John Knowles and Declaration of Brenda Stewart, is being filed herewith.

Respectfully submitted,

LEWIS FISHER HENDERSON
CLAXTON & MULROY, LLP
6410 Poplar Avenue, Suite 300
Memphis, Tennessee 38119
Telephone: (901) 767-6160
Facsimile: (901) 767-7411

By: /s/ James R. Mulroy, III
James R. Mulroy, II
Kelly S. Gooch

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of June, 2006 electronically filed the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Kenneth F. Gray, Jr., Esq.
Bret M. Gray, Esq.
Griffin & Associates
2100 River Haven Drive, Suite 1
Hoover, AL 35244

/s/ James R. Mulroy, II
Counsel for Defendant